

European Commission consults on the enforcement of intellectual property rights

The challenge to effective enforcement of intellectual property rights as a result of the internet has received significant attention. The European Commission (“Commission”) has now published a report on the application of the EU Directive on the enforcement of intellectual property rights in the Member States (“Directive”). The Directive, dating from 2004, sets out civil law enforcement measures based on the TRIPS Agreement.

While generally the Directive is considered a success in strengthening rights holders’ positions across the EU, the report suggests that enforcement could be improved because there are differences in the interpretation and application of the Directive in the Member States. The Commission looks into the role of intermediaries and in particular online platforms and internet providers. Overall, the Commission focuses particularly on the inadequate treatment of online related infringements. The report also highlights the lack of effectiveness of the current damages regime in the context of the benefits that can be derived from infringement.

The consultation is open until 31 March 2011. The results will feed into an impact assessment which is likely to lead to a review of the current legal framework.

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